

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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Amendments to Chapters 12-50, 12-52.1, 12-55, 12-60,
12-110, 12-170, 12-180, 12-190
Hawaii Administrative Rules

Date

1. Section 12-50-1, Hawaii Administrative Rules, is amended to read as follows:

"§12-50-1 Application. This part contains occupational safety and health administrative rules, which apply to parts 1 through 8. [Parts 2 and 8 apply] Part 2 applies to all industries in all work environments, except that audiometric testing in [chapter 12-200.1] §1910.95 does not apply to construction work unless employees are exposed to an 8-hour time weighted average of 90 dBA and above. Part 3 applies only to construction work." [Eff 7/12/82; am 8/15/87; am 11/16/96; am 2/14/00; am 5/21/04; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

2. Section 12-50-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Accessory structure" means a structure not greater than 3,000 square feet (279m²) in floor area, and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot." [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

3. Section 12-50-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

“Dwelling” means any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.” [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

4. Section 12-50-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

“Dwelling unit” means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

5. Section 12-50-2, Hawaii Administrative Rules, is amended by amending the definition of “employee” to read:

“Employee” means every natural person who is required, directed, permitted, or suffered by any employer to engage in any employment, to go to work, or be at any time in any place of employment. The term may mean a former employee in the case of potential exposures to toxic materials or harmful physical agents.” [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

6. Section 12-50-2, Hawaii Administrative Rules, is amended by amending the definition of “employer” to read:

“Employer” means the State and every state agency; each county and all public and quasi-public corporations and public agencies; every person which has any natural person in service; the legal representative of any deceased employer; or every person having direction, management, control, or custody of any employment, place of employment, or any employee. Where potential exposures to toxic

materials or harmful physical agents are, may have been present, or are likely to be present in the future, the term applies to current employers, former employers or successor employers." [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

7. Section 12-50-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Residential construction" means construction work on detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures." [Eff 7/02/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

8. Section 12-50-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof." [Eff 7/02/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

9. Section 12-50-9, Hawaii Administrative Rules, is repealed.

["§12-50-9 Incorporation by reference. Incorporation of federal standard. Title 29, Code of Federal Regulations, section 1910.6, entitled "Incorporation by reference" published by the Office of the Federal Register, National Archives and Records Administration, on June 27, 1974; and the amendments published on February 10, 1984; March 7, 1996; March 23, 1999; September 13, 2005; February 14, 2007; and December 14, 2007, are made a part of this section.] [Eff 2/14/00; am 12/29/00; am 3/31/06; am 08/26/07; am 5/02/2008; R]

10. Section 12-52.1-2, Hawaii Administrative Rules, is amended to read as follows:

"§12-52.1-2 Incorporation of federal standard. Title 29,[Code of Federal Regulations,] Part 1904[, entitled "Occupational Injury and Illness Recording and Reporting Requirements" published by the Office of the Federal Register, National Archives and Records Administration on January 19, 2001; and the amendments published on October 12, 2001; July 1, 2002; December 17, 2002; and June 30, 2003, are] of the Code of Federal Regulations, 2011 Edition published as of July 1, 2011, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made part of this chapter, except as provided in section 12-52.1-1." [Eff 12/29/01; am 1/10/03; am 5/21/04; am 5/5/05; am]
(Auth: HRS §396-4) (Imp: HRS §396-4)

11. Section 12-55-1, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-1 General policy. [DOSH] HIOSH access to employee medical records will in certain circumstances be important to the division's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, [DOSH] HIOSH authority to gain access to personally identifiable employee medical information shall be exercised only after [DOSH] HIOSH has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, [DOSH] HIOSH examination and use of it will be limited to only that information needed to accomplish the purpose of access. Personally identifiable employee medical information will be retained by [DOSH] HIOSH only for so long as needed to accomplish the purpose of access, shall be kept secure while being used, and shall not be disclosed to other agencies or members of the public except in narrowly defined circumstances." [Eff 7/12/82; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

12. Section 12-55-2, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-2 Scope and application. (a) This chapter establishes procedures to implement the general policy.

(b) This chapter applies to all requests by [DOSH] HIOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of section [12-202-3(e)] 1910.1020.

(c) This chapter does not apply to [DOSH] HIOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which are not in a personally identifiable form nor to records required by chapter [12-52] 12-52.1, to death certificates, nor to employee exposure records, including biological monitoring records treated by section [12-202-3(e)] 1910.1020, or by specific occupational safety and health standards such as exposure records.

(d) This chapter does not apply where [DOSH] HIOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with section [12-202-3(e)] 1910.1020. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the recordholder. The [DOSH] HIOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

(e) This chapter does not apply to [DOSH] HIOSH access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(f) This chapter does not apply where a written directive by the director authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

(g) Even if not covered by the terms of this chapter, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may be, for example, personal privacy interests involved which militate against disclosure of this kind of information to the public."

[Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

13. Section 12-55-3, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-3 Director. The director shall be responsible for the overall administration and implementation of the procedures contained in this chapter including making final [DOSH] HIOSH determinations concerning:

- (1) Access to personally identifiable employee medical information, as provided in section 12-55-6; and
 - (2) Inter-agency transfer or public disclosure of personally identifiable employee medical information, as provided in section 12-55-18."
- [Eff 7/12/82; am 8/15/87; am]
(Auth: HRS §396-4) (Imp: HRS §396-4)

14. Section 12-55-4, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-4 [DOSH] HIOSH medical records officer. The director shall designate a [DOSH] HIOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the [DOSH] HIOSH medical records officer. The [DOSH] HIOSH medical records officer shall report directly to the director on matters concerning this section and shall be responsible for:

- (1) Making recommendations to the director as to the approval or denial of written access orders, pursuant to section 12-55-6;
- (2) Ensuring that written access orders meet the requirements of sections 12-55-7 and 12-55-8;
- (3) Responding to employee, or their designated representative, and employer objections concerning written access orders, as provided in section 12-55-11;
- (4) Regulating the use of direct personal identifiers, as provided in section 12-55-12;
- (5) Regulating internal [DOSH] HIOSH use and security of personally identifiable employee medical information, pursuant to sections 12-55-13, 12-55-14, and 12-55-15;
- (6) Ensuring that the results of [DOSH] HIOSH analyses of personally identifiable medical information are communicated to employees, as provided in section 12-55-16;

- (7) Preparing an annual report of [DOSH] HIOSH experience pursuant to section 12-55-17; and
- (8) Ensuring that advance notice is given of intended inter-agency transfers or public disclosures, pursuant to section 12-55-18." [Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

15. Section 12-55-5, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-5 Principal [DOSH] HIOSH investigator. The principal [DOSH] HIOSH investigator shall be the [DOSH] HIOSH employee, in each instance of access to personally identifiable employee medical information, who is made primarily responsible for ensuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of sections 12-55-6 through 12-55-18. When access is pursuant to a written access order, the principal [DOSH] HIOSH investigator shall be professionally trained in medicine, public health, or allied fields such as epidemiology, toxicology, industrial hygiene, biostatistics, and environmental health." [Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

16. Section 12-55-6, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-6 Requirement for written access order. Except as provided in section 12-55-9, each request by a [DOSH] HIOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the director upon the recommendation of the [DOSH] HIOSH medical records officer. If deemed appropriate, a written access order may constitute or be accompanied by an administrative subpoena." [Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

17. Section 12-55-7, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-7 Approval criteria for written access order.

Before approving a written access order, the director and the [DOSH] HIOSH medical records officer shall determine that:

- (1) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information;
- (2) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access; and
- (3) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications." [Eff 7/12/82;
am] (Auth: HRS §396-4) (Imp: HRS §396-4)

18. Section 12-55-8, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-8 Content of written access order.

Each written access order shall state with reasonable particularity:

- (1) The statutory purposes for which access is sought;
- (2) A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information;
- (3) Whether medical information will be examined on-site, and what type of information will be copied and taken off-site;
- (4) The name, address, and phone number of the principal [DOSH] HIOSH investigator and the names of any other authorized persons who are expected to review and analyze the medical information;
- (5) The name, address, and phone number of the [DOSH] HIOSH medical records officer; and
- (6) The anticipated period of time during which [DOSH] HIOSH expects to retain the employee

medical information in a personally identifiable form." [Eff 7/12/82; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

19. Section 12-55-9, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-9 Special situations concerning written access order. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

- (1) If the specific written consent of an employee is obtained pursuant to section [12-202-3(e)(2)(B)] 1910.1020, and [DOSH] HIOSH or a [DOSH] HIOSH employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a principal [DOSH] HIOSH investigator shall be promptly named to ensure protection of the information, and the [DOSH] HIOSH medical records officer shall be notified of this person's identity. The personally identifiable medical information obtained shall be subject to the use and security requirements of sections 12-55-13 through 12-55-18.
- (2) A written access order need not be obtained where a [DOSH] HIOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the [DOSH] HIOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make personal notes of his or her findings. No employee medical records shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the [DOSH] HIOSH physician shall leave his or her control without the permission of the [DOSH] HIOSH medical records officer." [Eff 7/12/82; am 8/15/87;

am] (Auth: HRS §396-4) (Imp: HRS
§396-4)

20. Section 12-55-10, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-10 Presentation of written access order and notice to employees. (a) The principal [DOSH] HIOSH investigator, or someone under the investigator's supervision, shall present at least two copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the [DOSH] HIOSH principal investigator or to the [DOSH] HIOSH medical records officer.

(b) The principal [DOSH] HIOSH investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each designated representative of the employees whose medical records are subject to the written access order.

(c) The principal [DOSH] HIOSH investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter. See section [12-202-3(d)(3)(B)] 1910.1020.

(d) The principal [DOSH] HIOSH investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal [DOSH] HIOSH investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file." [Eff 7/12/82; am 8/15/87; am]
(Auth: HRS §396-4) (Imp: HRS §396-4)

21. Section 12-55-11, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-11 Objections concerning a written access order. All employees, or their designated representatives, and an employer's written objections concerning access to records pursuant to a written access order shall be transmitted to the [DOSH] HIOSH medical records officer. Unless [DOSH] HIOSH decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The [DOSH] HIOSH medical records officer shall respond in writing to each employee's or their designated representative's written objection to [DOSH] HIOSH access. Where appropriate, the [DOSH] HIOSH medical records officer may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The principal [DOSH] HIOSH investigator shall ensure that such instructions by the [DOSH] HIOSH medical records officer are promptly implemented." [Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

22. Section 12-55-12, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-12 Removal of direct personal identifiers. Whenever employee medical information obtained pursuant to a written access order is taken offsite with direct personal identifiers included, the principal [DOSH] HIOSH investigator shall, unless otherwise authorized by the [DOSH] HIOSH medical records officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal [DOSH] HIOSH investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the [DOSH] HIOSH medical records officer. The [DOSH] HIOSH medical records officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents." [Eff 7/12/82; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

23. Section 12-55-13, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-13 Internal agency use of personal identifiable employee medical information. (a) The principal [DOSH] HIOSH investigator shall in each instance of access be primarily responsible for ensuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

(b) The principal [DOSH] HIOSH investigator, the [DOSH] HIOSH medical records officer, the director, and any other authorized person listed on a written access order may permit the examination or use of personal identifiable employee medical information by [DOSH] HIOSH employees and contractors who have a need for access, and appropriate qualifications, for the purpose for which they are using the information. No [DOSH] HIOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(c) Where a need exists, access to personally identifiable employee medical information may be provided to the attorney general and to [DOSH] HIOSH contractors who are physicians or who have contractually agreed to abide by the requirements of this section, implementing [DOSH] HIOSH directives, and [DOSH] HIOSH instructions.

(d) [DOSH] HIOSH employees and contractors are only authorized to use personal identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of sections 12-55-6 through 12-55-12 are repeated with respect to the secondary purpose.

(e) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personal identifiable form."

[Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

24. Section 12-55-14, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-14 Security procedures. (a) [DOSH] HIOSH files containing personally identifiable employee medical information shall be segregated from other agency files.

When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(b) The [DOSH] HIOSH medical records officer and the principal [DOSH] HIOSH investigator shall each maintain a log of uses and transfers of personal identifiable employee medical information and lists of coded direct personal identifiers, except for necessary uses by staff under their direct personal supervision.

(c) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(d) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(e) Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means, Inter-office mailing channels shall not be used." [Eff 7/12/82; am] (Auth: HRS §396-4) (Imp: HRS §396-4

25. Section 12-55-15, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-15 Retention and destruction of records. (a) Consistent with [DOSH] HIOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(b) Personally identifiable employee medical information which is not in current use but may be needed for future use shall be transferred to the [DOSH] HIOSH medical records officer. The [DOSH] HIOSH medical records officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained." [Eff 7/12/82; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

26. Section 12-55-16, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-16 Agency analysis using personal identifiable employee medical information. The [DOSH] HIOSH medical records officer shall, as appropriate, assure that the results of a [DOSH] HIOSH analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis." [Eff 7/12/82; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

27. Section 12-55-17, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-17 Annual report. The [DOSH] HIOSH medical records officer shall on an annual basis review [DOSH] HIOSH's experience under this section during the previous year, and prepare a report to the director which shall be made available to the public. This report shall discuss:

- (1) The number of written access orders approved and a summary of the purposes for access;
- (2) The nature and disposition of employee, or their designated representative, and employer written objections concerning [DOSH] HIOSH access to personally identifiable employee medical information; and
- (3) The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information." [Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

28. Section 12-55-18, Hawaii Administrative Rules, is amended to read as follows:

"§12-55-18 Inter-agency transfer and public disclosure. (a) Personal identifiable employee medical information shall not be transferred to another agency or office outside of [DOSH] HIOSH (other than to the attorney general) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the director.

(b) Except as provided in subsection (c) below, the director shall not approve a request for an inter-agency

transfer of personal identifiable employee medical information, for which the employees have not given their consent, unless the request is by a public health agency which:

- (1) Needs the requested information in a personally identifiable form for a substantial public health purpose;
- (2) Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;
- (3) Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this chapter; and
- (4) Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information. See 5 U.S.C. 552a(b); 29 CFR 70a.3.

(c) Upon the approval of the director, personally identifiable employee medical information may be transferred to:

- (1) The National Institute for Occupational Safety and Health (NIOSH); and
- (2) The State attorney general, when necessary, with respect to a specification under chapter 396, HRS.

(d) The director shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

(e) The director shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy. See, 5 U.S.C. 552(b)(6); 29 CFR 70.26.

(f) Except as to inter-agency transfers to NIOSH or the Department of Justice, the [DOSH] HIOSH medical records officer shall ensure that advance notice is provided to any designated representative of the affected employees and to the employer on each occasion that [DOSH] HIOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the [DOSH] HIOSH medical records officer shall

take reasonable steps to ensure that advance notice is provided to affected employees when the employee medical information to be transferred or disclosed contains direct personal identifiers." [Eff 7/12/82; am 8/15/87; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

29. Chapter 12-60, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§12-60-50 Standards. (a) Incorporation of federal standard. Title 29, Part 1910 of the Code of Federal Regulations, 2011 Edition, published as of July 1, 2011, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter except as provided in subsection (b). Title 29, Code of Federal Regulations, Part 1910, entitled "General Working Conditions in Shipyard Employment; Final Rules," published by the Office of the Federal Register, National Archives and Records Administration on May 2, 2011, July 25, 2011, and "Standards Improvement Project - Phase III" published by the Office of the Federal Register, National Archives and Records Administration, on June 8, 2011, are made a part of this chapter.

(b) State specific definitions. The following definitions are in addition to those found in section 12-50-2 and subsection (a). Where a definition exists in both subsection (a) and this subsection, the definition contained in this subsection supersedes the definition in subsection (a). This State's adoption of 29 CFR Part 1910.2, Definitions, is amended by adding the following definitions:

"Access" means the right and opportunity to examine and copy.

"Analysis using exposure or medical records" means any compilation of data, or any research, or statistical or other studies based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

"ANSI Z9.2" means ANSI Z9.2-1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems.

"ANSI Z88.2" means ANSI Z88.2-1984, Practices for Respiratory Protection.

"Coal tar pitch volatiles" mean, as used in Exhibit A, the fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum (excluding asphalt, CAS 8052-42-4 and CAS 64742-93-4), wood, and other organic matter.

"Designated representative," means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective-bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Employee exposure record" means a record containing any of the following kinds of information:

- (1) Environmental (workplace) monitoring or measuring of a toxic substance or a harmful physical agent, including personal, area, grab, or wipe sampling, or any other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- (2) Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;
- (3) Material safety-data sheets; and
- (4) A chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

"Employee medical record" means a record concerning the health status of an employee, which is made or maintained by a physician or nurse, or any other health care personnel or technician, including:

- (1) Medical and employment questionnaires or histories (including job description and occupational exposures);
- (2) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record");
- (3) Medical opinions, diagnoses, progress notes, and recommendations;
- (4) Descriptions of treatments and prescriptions;
- (5) First-aid records; and
- (6) Employee medical complaints; but does not include medical information in the form of:
 - (A) Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice; or
 - (B) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or
 - (C) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or
 - (D) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

"Excursion factor" means the magnitude of the permissible excursion above the PEL-TWA for those substances not preceded by a "C" in Exhibit A and not found in Exhibit B.

"Exposure" or "exposed" means that an employee is subjected to a toxic material or harmful physical agent in the course of employment through any route of entry, such as inhalation, ingestion, skin contact, or

absorption, and includes past exposure and potential exposure.

"Health professional" means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

"Permissible Exposure Limit (PEL)" means the airborne concentrations of substances to which it is believed that nearly all workers may be exposed with no adverse effect.

"Permissible Exposure Limit-Ceiling (PEL-C)" means the concentration that shall not be exceeded even instantaneously. The PEL-C is the employee's exposure, which shall not be exceeded during any part of the workday. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure, which shall not be exceeded at any time over a working day.

"Permissible Exposure Limit-Short Term Exposure Level (PEL-STEL)" means the employee's 15-minute time weighted average exposure, which shall not be exceeded at any time during a workday unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time limit shall not be exceeded at any time during the workday.

"Permissible Exposure Limit-Time Weighted Average (PEL-TWA)" means the employee's average airborne exposure, which shall not be exceeded in any 7- to 8-hour work shift of a 40-hour workweek.

"Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Specific written consent" means a written authorization containing:

- (1) The name and signature of the employee authorizing the release of medical information;
- (2) The date of the written authorization;

- (3) The name of the individual or organization that is authorized to release the medical information;
- (4) The name of the designated representative (individual or organization) that is authorized to receive the released information;
- (5) A general description of the medical information that is authorized to be released;
- (6) A general description of the purpose for the release of the medical information; and
- (7) A date or condition upon which the written authorization will expire (if less than one year); but A written authorization does not authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization. A written authorization may be revoked in writing prospectively at any time.

"Toxic material or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) which:

- (1) Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS); or
- (2) Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or
- (3) Is the subject of a material safety-data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

"Trade secret" means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

(c) State specific standards for Occupational Noise

Exposure. The following standards are in effect in addition to those adopted by subsection (a). Where standards on a particular item exist in both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

- (1) 29 CFR 1910.95 Table G-16 is amended to read as follows:

"TABLE G-16-PERMISSIBLE NOISE EXPOSURES¹

<u>Duration per day, hours</u>	<u>Sound level dBA slow response</u>
8.....	90
6.....	92
4.....	95
3.....	97
2.....	100
1-1/2.....	102
1.....	105
1/2.....	110
1/4 or less.....	115

¹When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of the following fractions: $C1/T1 + C2/T2 + \dots + Cn/Tn$ exceeds unity, then, the mixed exposure shall be considered to exceed the limit value. Cn indicates the total time of exposure at a specific noise level, an Tn indicates the total time of exposure permitted at that level. Exposure to impulsive or impact noise shall not exceed 140 dB peak sound pressure level."

- (2) 29 CFR 1910.95(c) (1) is amended to read as follows:

(A) The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (o) of this section, whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale (slow response) or a dose of 50 percent. For purposes of the hearing conservation

program, employee noise exposures shall be computed in accordance with appendix (a) and table G-16a, and without regard to any attenuation provided by the use of personal protective equipment.

(d) State specific standards for Toxic and Hazardous Substances. The following standards are in effect in addition to those adopted by subsection (a). Where standards on a particular item exist in both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

(1) 29 CFR 1910.1000 is amended by adding the following:

(A) All employers shall measure, monitor, and record employee exposure to toxic materials or harmful physical agents. The measurement shall determine if any employee may be exposed to concentrations of the toxic materials or harmful physical agents at or above the permissible exposure limit. The determination shall be made each time there is a change in production, process, or control measures which could result in an increase in concentrations of these materials or agents. A written record of the determination shall be made and shall contain at least:

- (i) Any information, observations, or calculations that may indicate employee exposure to toxic or potentially toxic materials or harmful physical agents;
 - (ii) Any measurements taken;
 - (iii) Any employee complaints of symptoms that may be attributable to exposure to toxic or potentially toxic materials or harmful physical agents;
 - (iv) Date of determination, work being performed at the time, location within work site, name, and social security number of each employee considered; and
 - (v) Any other information that may be relevant to employee exposure.
- (B) When medical examinations are appropriate for adequate employee protection, the

employer shall, at the employer's cost, provide examinations to best determine the effect of toxic material or harmful physical agents on the health of employees.

- (2) 29 CFR 1910.1000(a) is amended to read as follows:

(A) Air Contaminants Limits Column. An employee's exposure to any substance listed in Exhibit A shall not exceed the PEL-TWA, PEL-STEL and PEL-Ceiling specified for that substance shown in Exhibit A.

(i) Because many industrial exposures are not continuous, but instead are short-term, or intermittent, to which the PEL-TWAs cannot be applied, PEL-STELs for selected air contaminants are listed in Exhibit A.

(ii) The PEL-STELs listed in Exhibit A are 15-minute time-weighted average (TWA) exposures that shall not be exceeded at any time during a workday.

(iii) Exposures at the PEL-STEL shall not be longer than 15-minutes and shall not be repeated more than four times per day. There shall be at least 60 minutes between successive exposures at the PEL-STEL.

(B) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Exhibit A with an "X" in the Skin Designation columns shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls, or work practices.

- (3) 29 CFR 1910.1000(b) is amended to read as follows:

(A) Exhibit B.

(i) PEL-TWA. An employee's exposure to any material listed in Exhibit A, in any 7- to 8-hour work shift of a 40-hour workweek, shall not exceed the PEL-TWA given for that material in Exhibit B

(ii) Acceptable ceiling concentration. An employee's exposure to a material

listed in Exhibit B shall not exceed at any time during a 7- to 8-hour work shift the acceptable ceiling concentration given for that material in the table.

- (4) The incorporation of Exhibit A at the end of section 12-60-50 entitled "Limits for Air Contaminants" dated July 1, 2011, is made a part of this chapter.
- (5) The incorporation of Exhibit B at the end of section 12-60-50 entitled "More Limits for Air Contaminants" dated July 1, 2011, is made a part of this chapter." [Eff _____] (Auth: HRS §396-4) (Imp: HRS §396-4)

Historical note: §12-60-50 is based substantially upon Part 2. [Eff 6/8/82, am 7/24/94, am 9/30/94, am 8/10/95, am 1/16/96, am 2/8/97, am 10/23/97, am 7/6/98, am 3/29/99, am 7/6/99, am 2/14/00, am 12/29/00, am 12/29/01, am 5/21/04, am 5/5/05, am 9/1/05, am 3/31/06, am 12/21/06, am 4/19/07, am 8/29/07, am 5/2/08, am 7/27/09, R _____] and Part 8 [Eff 7/12/82, am 5/28/83, am 6/16/84, am 8/5/88, am 3/22/91, am 6/8/92, am 2/26/93, am 7/25/94, am 8/10/95, am 1/26/96, am 9/21/96, am 11/16/96, am 2/8/97, am 5/2/97, am 7/10/97, am 4/11/98, am 7/6/98, am 3/29/99, am 12/29/00, am 8/9/01, am 12/29/01, am 5/21/04, am 3/31/06, am 12/21/06, am 4/19/07, am 7/27/09, R _____]

- 30. Chapter 12-62.1 is repealed.
- 31. Chapter 12-63.1 is repealed.
- 32. Chapter 12-64.1 is repealed.
- 33. Chapter 12-66.1 is repealed.
- 34. Chapter 12-67.2 is repealed.
- 35. Chapter 12-69.1 is repealed.
- 36. Chapter 12-71.1 is repealed.
- 37. Chapter 12-72.1 is repealed.
- 38. Chapter 12-73.1 is repealed.

- 39. Chapter 12-74.1 is repealed.
- 40. Chapter 12-77.1 is repealed.
- 41. Chapter 12-78.2 is repealed.
- 42. Chapter 12-79.1 is repealed.
- 43. Chapter 12-80.1 is repealed.
- 44. Chapter 12-83.1 is repealed.
- 45. Chapter 12-88.1 is repealed.
- 46. Chapter 12-89.1 is repealed.
- 47. Chapter 12-91.1 is repealed.
- 48. Chapter 12-92.1 is repealed.
- 49. Chapter 12-93.1 is repealed.
- 50. Chapter 12-95.1 is repealed.
- 51. Chapter 12-97.1 is repealed.
- 52. Chapter 12-100.1 is repealed.
- 53. Chapter 12-105 is repealed.
- 54. Chapter 12-110, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§12-110-50 Standards (a) Incorporation of federal standard. Title 29, Part 1926 of the Code of Federal Regulations, 2011 Edition published as of July 1, 2011, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter except as provided in subsection (b). Title 29, Code of Federal Regulations, Part 1926 entitled "Standards Improvement Project - Phase III" published by the Office of the Federal register, National Archives and Records Administration, on June 8, 2011, is made a part of this chapter.

(b) State specific definitions . The following definitions are in addition to those found in section 12-50-2, section 12-60-50, and those adopted by subsection (a). Where a definition exists in subsection (a), section 12-50-2, section 12-60-50, or this subsection, the definition contained in this subsection supersedes the definition in subsection (a), section 12-50-2, and section 12-60-50. This State's adoption of 29 CFR 1926.32, Definitions, is amended by adding the following definitions:

"Barricades" means an obstruction to deter the passage of persons or vehicles.

"Dwelling" means any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

"Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

"Residential construction" means construction work on detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height

"Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof."

"Infeasible" means that it is impossible to perform the work using all available means and methods or that it is technologically impossible to use safety equipment or safe practices.

"Signs" are the warnings of hazard, temporarily or permanently affixed or placed, at locations where hazards exist.

"Signals" are moving signs, provided by workers, such as flaggers, or by devices, such as flashing lights, to warn of possible or existing hazards.

"Tags" are temporary signs, usually attached to a piece of equipment or part of a structure, to warn of existing or immediate hazards.

(c) State specific standards for Signs, Signals, and Barricades. The following standards are in effect in addition to those adopted by subsection (a). Where standards on a particular item exist for both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

- (1) This State's adoption of 29 CFR 1926.200(g)(2), traffic signs, is amended to read as follows:
- (A) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the Manual of Uniform Traffic Control Devices (AMUTCD), Part VI of the Manual on Uniform Traffic Control Devices, Millennium Edition, December 2000, FHWA, which is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Millennium Edition from the following organizations: American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406-1022; Telephone: 1-800-231-3475; FAX: (540) 368-1722; www.atssa.com; Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005-3438; FAX (202) 289-7722; www.ite.org; and American Association of State Highway and Transportation Officials; www.aashto.org; Telephone: 1-800-231-3475; FAX: 1-800-525-5562. Electronic copies of the MUTCD 2000 are available for downloading at <http://mutcd.fhwa.dot.gov/knomillennium>. The document is available for inspection at the OSHA Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(d) State specific standards for Steel Erection. The following standards are in effect in addition to those adopted by subsection (a). Where standards on a particular item exist for both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

- (1) The following requirements have been added to this State's adoption of 29 CFR, Part 1926, Subpart R:

- (A) Personnel employed in steel erection shall wear hard hats at all times while on the job site.
 - (B) Protective footwear as defined in ANSI Z41-1999, shall be worn at all times while on the job site.
 - (C) Gloves, special protective clothing, respirators, and any other personal protective equipment shall be worn as necessary.
 - (D) There shall be maintained at the site a record of the identity of the Structural Engineer of Record (SER), all qualified persons and their area of expertise, and all competent persons for the steel erection activity.
 - (E) All approvals, certifications, authorizations, drawings and plans required by this chapter shall be maintained onsite until all steel erection activity is completed.
- (2) The following definitions in this State's adoption of 29 CFR 1926.751, Definitions, have been amended to read as follows:
 - "Hole" means a gap or void more than 2 inches (5.1 cm) in its least dimension in a floor, roof or other walking/working surface. Pre-engineered holes in cellular decking (for wires, cables, etc.) are not included in this definition.
 - "Opening" means a gap or void 5 inches (12.7 cm) or more in its least dimension in a floor, roof or other walking/working surface. For the purposes of this subpart, skylights and smoke domes that do not meet the strength requirements of section 1926.754(e) (3) shall be regarded as openings.
- (3) This State's adoption of 29 CFR 1926.752(a), Approval to begin steel erection, is amended to read as follows:
 - Approval to begin steel erection. Before authorizing the commencement of steel erection, the controlling contractor shall ensure that there are steel erection drawings that are structure specific and a site-specific erection plan as required. In addition, the steel erector is to be provided with the following written

notifications, including the documentation supporting the determinations:

- (A) The concrete in the footings, piers and walls and the mortar in the masonry piers and walls has attained, on the basis of an appropriate ASTM standard test method of field-cured samples, either 75 percent of the intended minimum compressive design strength or sufficient strength to support the loads imposed during steel erection.
 - (B) Any repairs, replacements and modifications to the anchor bolts were conducted in accordance with section 1926.755(b).
- (4) This State's adoption of 29 CFR 1926.752(b), Commencement of steel erection, is amended to read as follows:
Commencement of steel erection. A steel erection contractor shall not erect steel unless it has received written notification and documentation supporting the determination that the concrete in the footings, piers and walls or the mortar in the masonry piers and walls has attained, on the basis of an appropriate ASTM standard test method of field-cured samples, either 75 percent of the intended minimum compressive design strength or sufficient strength to support the loads imposed during steel erection.
- (5) This State's adoption of 29 CFR 1926.752(d), Pre-planning of overhead hoisting operations, is amended to read as follows:
Pre-planning of overhead hoisting operations. All hoisting operations in steel erection shall be pre-planned by the controlling contractor to ensure that the requirements of section 1926.753(d) are met.
- (6) This State's adoption of 29 CFR 1926.752(e), Site-specific steel erection plan, is amended to read as follows:
Site-specific erection plan. Where employers elect, due to conditions specific to the site, to develop alternate means and methods that provide employee protection in accordance with sections 1926.753(c) (5), 1926.754(b) (1) & (2), 1926.756(a) (1), 1926.756(b), 1926.757(a) (2), 1926.757(a) (4), 1926.757(e) (4), or 12-110-50(c), a site-specific erection plan which includes

structure specific erection plans and drawings where applicable shall be developed by a qualified person and be available at the work site until all steel erection activity is completed. Guidelines for establishing a site-specific erection plan are contained in Appendix A to this section.

- (7) This State's adoption of 29 CFR 1926.753(c)(1)(i) is amended to read as follows: Cranes being used in steel erection activities shall be visually inspected prior to each shift by a competent person; the inspection shall include observation for potential deficiencies that may occur during operation. At a minimum this inspection shall include the following:
- (A) All control mechanisms for maladjustments;
 - (B) Control and drive mechanism for excessive wear of components and contamination by lubricants, water or other foreign matter;
 - (C) Safety devices, including but not limited to boom angle indicators, boom stops, boom kick out devices, anti-two block devices, and load moment indicators where required;
 - (D) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;
 - (E) Hooks and latches for deformation, chemical damage, cracks, or wear;
 - (F) Wire rope reeving for compliance with hoisting equipment manufacturer's specifications;
 - (G) Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt, or moisture accumulation;
 - (H) Hydraulic system for proper fluid level;
 - (I) Tires for proper inflation and condition;
 - (J) Ground conditions around the hoisting equipment for proper support, including ground settling under and around outriggers, ground water accumulation, or similar conditions;
 - (K) The hoisting equipment for level position; and
 - (L) The hoisting equipment for level position after each move and setup.

- (8) This State's adoption of 29 CFR 1926.753(c)(1)(iv) is amended to read as follows: The operator shall be responsible for those operations under the operator's direct control. Whenever there is any doubt as to safety, the operator shall have the authority to stop and refuse to handle loads, in accordance with section 12-57-7(b), until safety has been assured.
- (9) This State's adoption of 29 CFR 1926.753(c)(5)(i) is amended to read as follows: During the hoisting and placing of purlins and single joists when the rigger, who shall be a qualified rigger, has determined that safety latched on hooks are a greater hazard, or
- (10) This State's adoption of 29 CFR 1926.753(d)(1) is amended to read as follows: Routes for suspended loads shall be pre-planned by the controlling contractor to ensure that no employee is required to work directly below a suspended load except for:
(A) Employees engaged in the initial connection of the steel; or
(B) Employees necessary for the hooking or unhooking of the load.
- (11) This State's adoption of 29 CFR 1926.753(e)(2) is amended to read as follows: Components of the multiple lift rigging assembly shall be specifically designed and assembled with a maximum capacity for total assembly and for each individual attachment point. This capacity, certified by the manufacturer or a qualified rigger, shall be based on the manufacturer's specifications with a 5 to 1 safety factor for all components. The written certification of the components of the multiple rigging assembly by the manufacturer or qualified rigger along with the documentation supporting the certification shall be made available at the site.
- (12) This State's adoption of 29 CFR 1926.753(e)(4)(i) is amended to read as follows: The multiple lift rigging assembly shall be rigged with members:
(A) Attached at their center of gravity and maintained level such as by the use of tag lines;

- (13) This State's adoption of 29 CFR 1926.754(b) is amended to read as follows: The following additional requirements shall apply for multi-story structures:
- (A) The permanent floors shall be installed as the erection of structural members progresses, and there shall be not more than eight stories between the erection floor and the upper-most permanent floor, except where the structural integrity is maintained as a result of the design and is included in the site-specific erection plan.
 - (B) At no time shall there be more than four floors or 48 feet (14.6 m), whichever is less, of unfinished bolting or welding above the foundation or uppermost permanently secured floor, except where the structural integrity is maintained as a result of the design and is included in the site-specific erection plan.
 - (C) A fully planked or decked floor or nets shall be maintained within two stories or 30 feet (9.1 m), whichever is less, directly under any erection work being performed.
- (14) This State's adoption of 29 CFR 1926.756(a)(1), General requirements for erection stability, is amended to read as follows: During the final placing of solid web structural members, the load shall not be released from the hoisting line until the members are secured with at least two bolts per connection, of the same size and strength as shown in the erection drawings, drawn up wrench-tight or the equivalent as specified by the project structural engineer of record and contained in the site-specific erection plan, except as specified in §1926.756(b).
- (15) This State's adoption of 29 CFR 1926.756(b), Diagonal bracing, is amended to read as follows: Diagonal bracing. Solid web structural members used as diagonal bracing shall be secured by at least one bolt per connection drawn up wrench-tight or the equivalent as specified by the project structural engineer of record and contained in the site-specific erection plan.

- (16) The following requirement has been added to this State's adoption of 29 CFR 1926.756(c): If a seat or equivalent device is used, its use and the connection method shall be specified in the site-specific erection plan.
- (17) This State's adoption of 29 CFR 1926.757(a) (2) (i) (D) is amended to read as follows: Be included in the structure specific erection drawings and site-specific erection plans.
- (18) This State's adoption of 29 CFR 1926.757(a) (7) is amended to read as follows: No modification that affects the strength of a steel joist or steel joist girder shall be made without the written approval of the project structural engineer of record.
- (19) This State's adoption of 29 CFR 1926.757(d) (6) (i) is amended to read as follows: The bridging shall be indicated on the structure specific erection drawing;
- (20) This State's adoption of 29 CFR 1926.760, Fall protection, is amended to read as follows:
 - (A) General requirements.
 - (i) Each employee including connectors, engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge 10 feet (3.1 m) or more above a lower level shall be protected from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.
 - (ii) Perimeter safety cables. On multi-story structures, perimeter safety cables shall be installed at the final interior and exterior perimeters of the floors as soon as the metal decking has been installed. Perimeter safety cables shall meet the criteria for guardrail systems in Appendix G.
 - (iii) Employees performing leading edge work in controlled decking zones shall be protected from fall hazards as provided in subparagraph (B).

- (B) Controlled Decking Zone (CDZ). A controlled decking zone may be established where fall protection systems as described in subparagraph(A) (1) have been determined to be infeasible. The burden of proving infeasibility is that of the employer. For each CDZ, the following shall apply:
- (i) Leading edge work is being performed at heights of 10 feet (3.1 m) or more and up to 30 feet (9 m) above the next lower level.
 - (ii) The boundaries of a CDZ shall be designated and clearly marked by control lines or the equivalent.
 - (a) Control lines provide a visible, tangible reference and constant reminder to employees working in a CDZ.
 - (b) A control line for a CDZ shall be erected not less than 6 feet (1.8 m) nor more than 90 feet (27.4 m) from the leading edge.
 - (c) A control line for a CDZ shall not be more than 90 feet (37.4 m) wide.
 - (d) Control lines shall extend along the entire length on the unprotected or leading edge and are approximately parallel to the unprotected or leading edge.
 - (e) Control lines consist of ropes, wires, tapes, or equivalent materials, and supporting structures such as guardrail system, wall, stanchion, or other suitable anchorage.
 - (f) Each line shall have a minimum breaking strength of 200 pounds (90.0 kg).
 - (g) Each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than 39 inches (1.0 m) from the walking/working surface and its highest point is not more

- than 45 inches (1.3 m) from the walking/working surface.
- (h) A painted line on the walking/working surface is not equivalent to control lines and may not be used to demonstrate, define, or mark the boundary of a CDZ.
 - (i) A sign or other warning indicator positioned at the entrance to a CDZ is not an equivalent to control lines and may not be used in lieu of control lines or its equivalent.
 - (iii) Access to a CDZ shall be limited to only those employees engaged in leading edge work.
 - (iv) Each employee working in a CDZ shall have completed CDZ training in accordance with section 1926.761.
 - (v) Unsecured decking in a CDZ shall not exceed 3,000 square feet (914.4 m²).
 - (vi) Safety deck attachments (see definitions) shall be performed in the CDZ from the leading edge back to the control line and shall have at least two attachments for each metal decking panel.
 - (vii) Final deck attachments and installation of shear connectors shall not be performed in the CDZ.
 - (viii) A current and accurate list of employees who are authorized to work in the CDZ shall be maintained at the site. Authorized employees shall further be separately identified such that non-authorized access to the CDZ can be immediately noted and promptly addressed. Employees not authorized to work in the CDZ shall not be permitted to enter the CDZ.
- (C) Criteria for fall protection equipment.
- (i) Guardrail systems, safety net systems, personal fall arrest systems, positioning device systems and their components shall conform to the

- criteria in §1926.502 (see Appendix G to this chapter).
- (ii) Fall arrest system components shall be used in fall restraint systems and shall conform to the criteria in §1926.502 (see Appendix G to this chapter), except that the anchorages for a fall restraint system shall be capable of supporting at least 3,000 lbs (4.5 kN) per employee attached. Either body belts or body harnesses shall be used in fall restraint systems.
 - (iii) Perimeter safety cables shall meet the criteria for guardrail systems in §1926.502 (see Appendix G to this chapter).
- (D) Custody of fall protection. Fall protection and fall protection components provided by the steel erector shall not remain in the area where steel erection activity has been completed, unless responsibility has been assumed by the controlling contractor or its authorized representative:
- (i) Has directed the steel erector to leave the fall protection in place; and
 - (ii) Has inspected and accepted control and responsibility of the fall protection prior to authorizing persons other than steel erectors to work in the area.
- (21) This State's adoption of 29 CFR 1926.761 is amended to read as follows: The following provisions are supplemental the requirements regarding the hazards addressed in this chapter.
- (A) Training personnel. Training required by this section shall be provided by a qualified person(s).
 - (B) Fall hazard training. The employer shall train each employee exposed to a fall hazard in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

- (i) The recognition and identification of fall hazards in the work area;
 - (ii) The use and operation of the fall protection systems to be used by the employer and in the systems that may be encountered on the jobsite; e.g., guardrail systems (including perimeter safety cable systems), personal fall arrest systems, positioning device systems, fall restraint systems, safety net systems, and other protection to be used;
 - (iii) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
 - (iv) The procedures to be followed to prevent falls to lower levels and through or into holes and openings in walking/working surfaces and walls; and
 - (v) The fall protection requirements of this chapter.
- (C) Falling object or falling/flying load hazard training. The employer shall provide a training program for all employees exposed to falling object and/or falling/flying load hazards. The program shall include training and instruction in the following areas:
 - (i) How to recognize falling/flying objects hazards in the work area;
 - (ii) The consequences, including the likely injuries, from being hit or struck by falling/flying objects or loads;
 - (iii) What means, methods, and/or protective systems will be used to provide protection from falling/flying objects or loads;
 - (iv) The employees' specific responsibilities with respect to identifying hazards, identifying when protective systems have been compromised, and what actions to take to assist in their own and other employees' safety.

- (D) Reliance on a third party provider of training. The employer may not rely on a third party or former employer of current employees unless the employer has determined through testing and evaluation of employees that the past training has met the requirements of this chapter. Generic training must be supplemented with site-specific information and an opportunity to practice using the equipment that is specific to the jobsite.
- (E) Retraining. When the employer has reason to believe that any affected employee has already been trained does not have the understanding and skill required by this chapter, the employer shall retrain or provide re-training or additional training. Circumstances where retraining or additional training is required include, but is not limited to, situations where:

 - (i) Changes in the workplace render previous training obsolete; or
 - (ii) Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or
 - (iii) Inadequacies in an affected employee's knowledge or use of fall protection systems, hazard controls or equipment to be used indicate that the employee had not retained the requisite understanding or skill.
- (F) Special training programs. In addition to the training required in paragraphs (1) and (2), the employer shall provide special training to employees engaged in the following activities.

 - (i) Multiple lift rigging procedure. The employer shall ensure that each employee who performs multiple lift rigging has been provided training in the following areas:

 - (a) The nature of the hazards associated with multiple lifts; and

- (b) The proper procedures and equipment to perform multiple lifts required by section 1926.753(e).
 - (ii) Connector procedures. The employer shall ensure that each connector has been provided training in the following areas:
 - (a) The nature of the hazards associated with connecting; and
 - (b) The establishment, access, proper connecting techniques and work practices required by sections 1926.756(c) and 12-110-50(b).
 - (iii) Controlled Decking Zone Procedures. Where CDZs are being used, the employer shall assure that each employee has been provided training in the following areas:
 - (a) The nature of the hazards associated with work within a controlled decking zone; and
 - (b) The establishment, access, proper installation techniques and work practices required by sections 1926.760 and 1926.754(e).
- (G) Certification of training.
 - (1) The employer shall certify that each affected employee has been trained or evaluated and determined to be trained as required by this section.
 - (2) The written certification record shall contain the name or other unique identity of the employee trained, the date(s) of the training or the evaluation of prior training, and the signature of the person who conducted the training or the signature of the employer.
 - (3) The latest training certification shall be maintained and made readily available to employees, employee representatives and the director."
- (22) This State's adoption of 29 CFR 1926, Appendix A to Subpart R subsection (a), is amended to read as follows:

(A) General. This appendix serves as a guideline to assist employers who elect to develop a site-specific erection plan in accordance with section 1926.752(e) with alternate means and methods to provide employee protection in accordance with sections 1926.752(e), 1926.753(c)(5), 1926.754(b)(1)&(2), 1926.756(a)(1), 1926.756(b), 12-110-50(b)(16), 1926.757(a)(2), 1926.757(a)(4) and 1926.757(e)(4).

(23) This State's adoption of 29 CFR 1926, Subpart R, Steel Erection is amended by reserving Appendices D and E.

(e) State specific standards for Cranes and Derricks in Construction. The following standards are in effect in addition to those adopted by subsection (a). Where standards on a particular item exist for both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

(1) This State's adoption of 29 CFR 1926.1427(a)(4) is amended to read as follows:

(A) Whenever operator qualification or certification is required under §1926.1427, the employer must provide the qualification or certification at no cost to operators who are employed by the employer on November 8, 2011.

(2) This State's adoption of 29 CFR 1926.1427 is amended by the deletion of paragraphs (b), (c), and (d). Operators in Hawaii are required to be certified under the requirements of 12-48, Hawaii Administrative Rules.

(3) This State's adoption of 29 CFR 1926.1427(f) is amended by the deletion of 29 CFR 1926.1427(f)(4)(i), (ii), and (iii), and to read as follows:

(A) Continuous monitoring. The operator-in-training must be monitored by the operator's trainer at all times.

(4) This State's adoption of 29 CFR 1926.1427(k)(1) is amended to read as follows:

(A) The provisions of this section are applicable January 18, 2012. Operators who were not required to be certified under Chapter 48, Hawaii Administrative Rules as

- of December 31, 2011 must comply with paragraph (f) beginning January 18, 2012.
- (5) This State's adoption of 29 CFR 1926.1427(k) is amended by the deletion of subparagraph (k)(2).
- (6) This State's adoption of 29 CFR 1926.1430 (c)(2) is amended to read as follows:
- (A) Transitional Period. During the one-year phase-in period for operator certification or qualification, as provided in §1926.1427(k), employers must train each operator which has not yet been certified or qualified in the areas addressed in §1926.1427(j)." [Eff]
(Auth HRS §396-4) (Imp: HRS §396-4)

Historical note: Section §12-110-50 is based substantially upon Part 3. [Eff 2/26/93, am 11/5/93, am 7/25/94, am 8/10/95, am 1/26/96, am 9/21/96, am 11/16/96, am 2/8/97, am 10/23/97, am 7/6/98, am 3/29/99, am 12/29/00, am 1/10/03, am 5/21/04, am 5/5/05, am 9/1/05, am 3/31/06, am 12/21/06, am 4/19/07, am 8/26/07, am 5/2/08, am 7/27/09, R]

- 55. Chapter 12-111.1 is repealed.
- 56. Chapter 12-112.1 is repealed.
- 57. Chapter 12-113.1 is repealed.
- 58. Chapter 12-114.2 is repealed.
- 59. Chapter 12-115.1 is repealed.
- 60. Chapter 12-116.1 is repealed.
- 61. Chapter 12-117.1 is repealed.
- 62. Chapter 12-118.1 is repealed.
- 63. Chapter 12-119.2 is repealed.
- 64. Chapter 12-120.1 is repealed.
- 65. Chapter 12-121.2 is repealed.
- 66. Chapter 12-122.2 is repealed.

67. Chapter 12-125.1 is repealed.
68. Chapter 12-126.1 is repealed.
69. Chapter 12-127.1 is repealed.
70. Chapter 12-128.1 is repealed.
71. Chapter 12-129.1 is repealed.
72. Chapter 12-130.1 is repealed.
73. Chapter 12-131.1 is repealed.
74. Chapter 12-132.2 is repealed.
75. Chapter 12-133.2 is repealed.
76. Chapter 12-134.1 is repealed.
77. Chapter 12-136.1 is repealed.
78. Chapter 12-141.1 is repealed.
79. Chapter 12-142.2 is repealed.
80. Chapter 12-145.1 is repealed.
81. Chapter 12-146 is repealed.
82. Chapter 12-147 is repealed.
83. Chapter 12-148.1 is repealed.
84. Chapter 12-149 is repealed.
85. Chapter 12-150 is repealed.
86. Chapter 12-151 is repealed.
87. Chapter 12-152 is repealed.
88. Chapter 12-153.1 is repealed.
89. Chapter 12-154.1 is repealed.

90. Chapter 12-155.1 is repealed.

91. Chapter 12-156 is repealed.

92. Chapter 12-157 is repealed.

93. Section 12-170-1, Hawaii Administrative Rules, is amended to read as follows:

"12-170-1 Incorporation of federal standard. Title 29, [Code of Federal Regulations, Part 1915, entitled "Occupational Safety and Health Standards for Shipyard Employment", published by the Office of the Federal Register, National Archives and Records Administration, on April 20, 1982; and the amendments published on April 30, 1984; July 7, 1986; September 29, 1986; August 24, 1987; April 27, 1988; February 15, 1989; June 7, 1989; September 14, 1992; October 30, 1992; April 23, 1993; January 3, 1994; February 9, 1994; July 19, 1994; July 25, 1994; August 10, 1994; December 22, 1994; February 21, 1995; March 16, 1995; June 8, 1995; June 29, 1995; July 13, 1995; September 29, 1995; February 13, 1996; March 7, 1996; May 24, 1996; June 13, 1996; June 20, 1996; August 23, 1996; November 4, 1996; January 10, 1997; June 20, 1997; March 19, 1998; June 29, 1998; December 1, 1998; March 1, 1999; July 3, 2002; September 15, 2004; January 5, 2005; March 21, 2005; February 28, 2006; April 3, 2006; October 17, 2006; November 15, 2007; and December 12, 2008, are] Part 1915 of the Code of Federal Regulations, 2011 Edition published as of July 1, 2011, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter. Title 29, Code of Federal Regulations, Part 1915 entitled "General Working Conditions in Shipyard Employment; Final Rule" published by the Office of the Federal Register, National Archives and Records Administration, on May 2, 2011 and "Standards Improvement Project - Phase III" published by the Office of the Federal Register, National Archives and Records Administration on June 8, 2011 are made a part of this chapter." [Eff 3/23/01; am 1/10/03; am 9/01/05; am 3/31/06; am 12/21/06; am 4/19/07; am 8/26/07; am 5/02/08; am 7/27/09; am] (Auth: HRS §396-4) (Imp: HRS §396-4)

94. Section 12-180-1, Hawaii Administrative Rules, is amended to read as follows:

"§12-180-1 Incorporation of federal standard. Title 29, [Code of Federal Regulations. Part 1917, entitled "Marine Terminals", published by the Office of the Federal Register, National Archives and Records Administration, on July 5, 1983; and the amendments published on July 13, 1984; August 24, 1987; September 25, 1987; December 4, 1987; December 31, 1987; April 27, 1988; June 7, 1989; February 9, 1994; July 19, 1994; December 22, 1994; February 13, 1996; July 25, 1997; December 1, 1998; August 27, 1999; November 12, 1999; June 30, 2000; February 28, 2006; November 15, 2007; December 10, 2008; and December 12, 2008, are] Part 1917 of the Code of Federal Regulations, 2011 Edition published as of July 1, 2011, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001 is made a part of this chapter. Title 29, Code of Federal regulations, Part 1917 entitled "Standards Improvement Project - Phase III" published by the Office of the Federal Register, National Archives and Records Administration, on June 8, 2011 is made a part of this chapter" [Eff 3/23/01; am 12/21/06; am 5/02/08; am 7/27/09; am]
(Auth: HRS §396-4) (Imp: HRS §39-4)

95. Section 12-190-1, Hawaii Administrative Rules is amended to read as follows:

"§12-190-1 Incorporation of federal standard. Title 29, [Code of Federal Regulations, Part 1918, entitled "Safety and Health Regulations for Longshoring", published by the Office of the Federal Register, National Archives and Records Administration, on July 9, 1974; and the amendments published on July 22, 1977; August 24, 1987; February 9, 1994; July 19, 1994; December 22, 1994; February 13, 1996; July 25, 1997; December 1, 1998; August 27, 1999; November 12, 1999; June 30, 2000; February 28, 2006; November 15, 2007; December 10, 2008; and December 12, 2008, are] Part 1918 of the Code of Federal Regulations, 2011 Edition published as of July 1, 2011, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made part of this chapter. Title 29, Code of Federal Regulations, Part 1918 entitled "Standards Improvement

Project - Phase III" published by the Office of the Federal Register, National Archives and Records Administration, on June 8, 2011 is made a part of this chapter" [Eff 3/23/01; am 12/21/06; am 5/02/08; am 7/27/09; am]
(Auth: HRS §396-4) (Imp: HRS §396-4)

96. Chapter 12-200.1 is repealed.

97. Chapter 12-201 is repealed.

98. Chapter 12-202 is repealed.

99. Chapter 12-203.1 is repealed.

100. Chapter 12-204.1 is repealed.

101. Chapter 12-205.1 is repealed.

102. Chapter 12-206 is repealed.

103. Chapter 12-207 is repealed.

104. Material, except source notes, to be repealed is bracketed. New material is underscored.

105. Additions to update source notes to reflect these amendments are not underscored.

106. The repeal of chapters 12-62.1, 12-63.1, 12-64.1, 12-66.1, 12-67.2, 12-69.1, 12-71.1, 12-72.1, 12-73.1, 12-74.1, 12-77.1, 12-78.2, 12-79.1, 12-80.1, 12-83.1, 12-88.1, 12-89.1, 12-91.1, 12-92.1, 12-93.1, 12-95.1, 12-97.1, 12-100.1, 12-105, 12-111.1, 12-112.1, 12-113.1, 12-114.2, 12-115.1, 12-116.1, 12-117.1, 12-118.1, 12-119.2, 12-120.1, 12-121.2, 12-122.2, 12-125.1, 12-126.1, 12-127.1, 12-128.1, 12-129.1, 12-130.1, 12-131.1, 12-132.2, 12-133.2, 12-134.1, 12-136.1, 12-141.1, 12-142.2, 12-145.1, 12-146, 12-147, 12-148.1, 12-149, 12-150, 12-151, 12-152, 12-153.1, 12-154.1, 12-155.1, 12-156, 12-157, 12-200.1, 12-201, 12-202, 12-203.1, 12-204.1, 12-205.1, 12-206, 12-207, and the amendments to chapters 12-50, 12-52.1, 12-55, 12-60, 12-110, 12-170, 12-180, 12-190, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules,
drafted in the Ramseyer format pursuant to the requirements
of section 91-4.1, Hawaii Revised Statutes, which were
adopted on _____, and filed with the Office of
the Lieutenant Governor.

DWIGHT TAKAMINE, DIRECTOR
Department of Labor and
Industrial Relations

APPRIVED AS TO FORM:

Deputy Attorney General